

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 22, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Darryl Judson  
Ray Dwyer

**BOARD MEMBERS ABSENT:** Mary Voelker  
Walter Tarmann

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Karen and Paul Stirmel, BA03:087, petitioners  
Steven Anderson, BA03:091, petitioner  
Michael Bertrand, BA03:092, petitioner  
Rowland Morrison, BA03:092, neighbor  
Cindy Musbach, BA03:093, petitioner  
Mike Millikin, Millikin Homes, Inc., BA03:093, builder  
Rick and Lynn Houdek, BA03:094, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I make a motion to approve the Summaries of the Meetings of September 10, 2003, and October 8, 2003.*

The motion was seconded by Mr. Ward. The motion to approve the Summary of the Meeting of September 10, 2003, was approved with three yes votes. Mr. Schultz and Mr. Dwyer abstained because they were not present at that meeting. The motion to approve the Summary of the Meeting of October 8, 2003, was approved with three yes votes. Mr. Ward and Mr. Dwyer abstained because they were not present at that meeting.

**NEW BUSINESS:**

**BA03:087 KAREN STIRMEL (held in abeyance from October 8, 2003)**

Mr. Schultz                              *I make a motion to adopt the staff's recommendation, with the recommended conditions, as stated in the Staff Report.*

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage addition must not be located any closer to the established road right-of-way than 26 ft. and must not be located any closer to the proposed right-of-way easement than 6 ft., as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the road and right-of-way easement as the overhangs exceed two (2) ft. in width.
2. The floor area ratio shall not exceed 15% of the lot area. Since this variance includes remodeling a non-conforming structure in excess of 50% of the fair market value and the Board is aware future remodeling is proposed, future remodeling of the residence can be completed without the necessity of an additional variance, provided the remodeling occurs within the existing residence and no additions of any kind are proposed.
3. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed attached garage and the existing residence with all appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey must include the entire lot and must include the legal description and Surveyor's Seal.
5. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
6. All gravel areas not utilized for the proposed easement and driveway must be restored with natural vegetation within 60 days of the expiration of the zoning permit.
7. A Certified Survey Map must be reviewed and approved by the Town of Eagle and the Planning and Zoning Division of the Waukesha County Department of Parks and Land Use. The Certified Survey Map shall include the location of the right-of-way easement and must also incorporate all conditions of the Waukesha County Department of Public Works letter of September 3, 2003. The Certified Survey Map shall also be reviewed by the Waukesha County Department of Public Works for compliance. The approved Certified Survey Map must be recorded in the Waukesha County Register of Deeds office, prior to the issuance of a zoning permit.
8. In order to ensure the construction of the attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to

provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. **The vegetative plan must include a restoration plan for replacing the existing parking lot with natural vegetative cover.**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the recommended conditions, is reasonable, since the existing residence is located closer to the shore and the 100-year floodplain than the proposed garage. In fact, the petitioner has proposed the attached garage significantly farther from the shore than the existing residence. The proposed garage will also not encroach on the road setback any more than the existing residence. The proposed road, shore, and 100-year floodplain setbacks are reasonable, considering the minimal land area between the road and the shore on the subject property. The proposal meets all other requirements, other than the distance from the proposed relocated easement. It is only logical that the easement be placed in its proposed location because of the steep slope on the south side of the property and the inconvenience as well as negative impacts on natural resources of having a right-of-way located on the front side of the residence, between the residence and the lake. The petitioner has reduced the width of the easement to the greatest extent possible to allow for some area between the proposed garage and the easement. As recommended, the property, which currently contains a parking lot, will be re-vegetated with natural vegetation. Restoring the property with natural vegetation will significantly improve the aesthetics of the area and improve the natural resources and water quality of the lake. Therefore, the approval of this request, with the recommended conditions, is within the spirit and intent of the Ordinance.

**BA03:091 STEVEN ANDERSON (petitioner), CRAIG NEUMANN (owner)**

Mr. Judson

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Schultz abstained.

The staff's recommendation was for approval, with the following conditions:

1. No more than two dormers may be added to the upper-level of the attached garage and the total width of both dormers may be no more 12 ft.
2. Prior to the issuance of a zoning permit, a complete set of plans, showing the dimensions of the proposed dormers, must be submitted to the Planning and Zoning Division staff for review and approval.

3. Prior to the issuance of a zoning permit, a detailed cost estimate must be submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable expansion of the residence. The space above the garage already exists and, except for the proposed dormers, the proposed construction will not alter the outside appearance of the residence. Since the residence is now served by municipal sewer, which was not the case at the time of the previous variance, there are no concerns regarding the septic system and the addition of a third bedroom. Constructing two small dormers and converting the unfinished attic storage space over the attached garage to finished living area will not change the footprint of the structure and will not adversely affect the surrounding property owners or the lake or be contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA03:092 MICHAEL BERTRAND**

Mr. Bartholomew

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, but with Condition #4 changed to read "The overall height of the sign, as measured to the top of the support posts, shall not exceed 15 ft."*

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The size of the sign may be as proposed, with the old 4 ft. high x 8 ft. wide sign installed between two upright posts and a 3.33 ft. high x 6 ft. wide, double-sided extension mounted below. The proposed neon "open" sign may be mounted at the top of the sign.
2. The sign, with the exception of the neon "open" sign shall not be illuminated.
3. In order to ensure that the sign will not obstruct the vision of motorists exiting the parking lot, the bottom of the sign must be at least 5 ft. above the ground elevation and any plant materials placed below or around the sign shall not exceed 1 ft. in height.
4. The overall height of the sign, as measured to the top of the support posts, shall not exceed 20 ft.
5. The sign may be located, as proposed, approximately 24 ft. from the centerline of the road.
6. A new Declaration of Restrictions, referencing this variance approval and with the correct legal description, stating that the sign will be located partially within the platted road right-of-way and completely within the established road right-of-way of Lake Drive and if, in the future, any portion of the sign should interfere with necessary road improvements, the sign must be relocated

at the owner's expense, shall be prepared by the Planning and Zoning Division staff. **Prior to the issuance of a zoning permit and the installation of the sign**, the new Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonably-sized sign in a visible, yet safe location, and in conformance with the approved Plan of Operation. With the recommended conditions, the sign will not be a safety hazard for motorists exiting the parking lot and is not contrary to the public interest. The sign cannot be located farther from the road without encroaching into the asphalt parking lot, which would interfere with the traffic flow in the parking lot and eliminate needed parking spaces. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

### **BA03:093 CRAIG & CINDY MUSBACH**

Mr. Ward

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, but with Condition #1 modified to read as follows:*

*"If a 25 ft. wide strip of land to the west is added to the property, the total floor area of the residence may be increased to a maximum of 2,200 sq. ft. (allowing an addition of approximately 296 sq. ft.). This expansion must include increasing the size of the attached garage to at least 400 sq. ft. Other than as noted above, the residence shall not be expanded, except in conformance with the maximum permitted floor area ratio of 15% and the minimum open space requirement of 10,000 sq. ft. Note: In order to permit the addition to be constructed as proposed, this will require the total lot area to be increased to at least 24,434 sq. ft."*

The motion was seconded by Mr. Judson and carried with four yes votes. Mr. Schultz voted no.

The staff's recommendation was for approval of variances from the minimum lot area, minimum average lot width, and minimum lake frontage requirements, to permit the petitioners to increase the size of their lot by purchasing additional land from the adjacent property to the west; denial of floor area ratio and open space variances to permit the construction of an addition to the residence; and approval of variances from the floodplain setback requirement and to remodel a non-conforming structure in excess of 50% of its fair market value to permit the construction of an addition to the residence, subject to the following conditions:

1. The residence shall not be expanded, except in conformance with the maximum permitted floor area ratio of 15% and the minimum open space requirement of 10,000 sq. ft. Note: In order to permit the addition to be constructed as proposed, this will require the total lot area to be increased to at least 24,434 sq. ft.

2. Since the residence contains only a one-car garage, the petitioners are encouraged to purchase more than the minimum amount of land necessary to accommodate the proposed addition and should be advised that future requests for a floor area ratio variance to permit the construction of a garage are unlikely to be granted.
3. If no addition to the residence is constructed, no limits will be placed on the amount of additional land that may be purchased from the adjacent lot to the west.
4. If additional land is purchased from the adjacent lot to the west, a Certified Survey Map showing the re-configured parcel must be prepared by a registered land surveyor, approved by the Town of Merton and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office. This must be done prior to the issuance of a zoning permit for an addition to the residence.
5. The addition shall be no larger than proposed on the plans submitted with the application. If the proposed addition is reduced in size, a complete set of revised plans must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit.
6. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
7. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the residence and proposed addition must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. No trees or vegetation located farther than 30 ft. from the addition shall be removed unless a landscaping and re-vegetation plan is prepared by a registered landscape architect and approved by the Planning and Zoning Division staff.
9. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of an addition to the residence does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested floor area ratio and open space variances would result in a disproportionately large residence on a very small, non-conforming lot, which is not in conformance with the purpose and intent of the Ordinance. It is felt that if the lot area is to be

expanded to accommodate an addition to the residence, it should be expanded so that the residence is in conformance with the floor area ratio and open space requirements. The proposed addition would be no closer to the floodplain than the existing deck on the lake side of the residence. The proposed addition would not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of variances from the minimum lot area, minimum average lot width, and minimum lake frontage requirements and the approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floodplain setback requirement, to permit the lot area to be expanded and to permit the construction of an addition to the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03:094 RICK & LYNN HOUDEK**

Mr. Schultz

*I make a motion to deny the request for a road setback variance to permit a detached garage, but approve a special exception from the road setback requirement to permit the construction of an addition to the attached garage, subject to the following conditions:*

- 1. The addition to the attached garage shall be no closer to the road right-of-way than the existing attached garage, which (according to Certified Survey Map No. 3355) is 29.1 ft. from the road right-of-way. The addition to the attached garage must also meet the minimum side yard offset requirement of 20 ft.*
- 2. A "preliminary site evaluation" of the addition to the attached garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the garage addition, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.*
- 3. Prior to the issuance of a zoning permit, a complete set of plans for the addition to the attached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*
- 4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the addition to the attached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*

*The reasons for this decision are as follows:*

*As conditioned, the addition to the attached garage would be no closer to the road than the existing house, requiring only a special exception, rather than a variance, which does not require the demonstration of an unnecessary hardship. The area to the west of the house, which is the only other possible site for a detached garage, has existing mature trees. A detached garage on the west side of the house would be an interference for the homes along King St.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. While the petitioners may desire to have additional garage space, denial of a road setback variance to permit the construction of a second garage does not prevent a reasonable use of the property. Even if there is no conforming location on the property for a detached garage, the existing residence and attached garage provide a reasonable use of the property. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

#### **ADJOURNMENT:**

Mr. Bartholomew                      *I make a motion to adjourn this meeting at 9:10 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment